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September 8, 2015

Via Regular and Electronic Mail

Vanita Gupta, Principal Deputy Assistant Attorney General
U.S. Department of Justice Civil Rights Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

RE: Baltimore Police Department Civil Rights Investigation

Dear Deputy Assistant Attorney General Gupta:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), I write to reiterate LDF's request that the Justice Department include the Baltimore School Police Force in its civil rights investigation of the Baltimore Police Department (BPD). LDF originally made this request at a meeting with U.S. Attorney General Loretta Lynch during her visit to Baltimore in May 2015 shortly after the police in-custody death of Freddie Gray. Current events and information that LDF received from Baltimore City Public Schools underscore the need for the inclusion of school police in the Justice Department's pattern or practice investigation of the BPD under the Violent Crime Control and Law Enforcement Act of 1994.¹

In late July 2015, a grand jury indicted University of Cincinnati police officer Ray Tensing for fatally shooting Samuel Dubose during a traffic stop.² The local prosecutor described the incident as "a senseless asinine shooting" because video footage from the officer's body-worn camera showed that Mr. Dubose did not pose a threat before the officer shot him.³ It is also disturbing to note that this shooting occurred in a city with a police department that has attempted to transform itself after a period of federal oversight for the excessive use of force by its officers over a decade ago. But, the University of Cincinnati Police Department was not included in the settlement agreement between the Justice Department and the city of

¹ The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, gives the Attorney General the authority to investigate and eliminate a pattern or practice of conduct by law enforcement officers who deprive persons of their rights, privileges, or immunities secured by the Constitution and federal law.

² See, Richard Pérez-Pena, *University of Cincinnati Officer Indicted in Shooting Death of Samuel Dubose*, The New York Times, July 29, 2015, http://www.nytimes.com/2015/07/30/us/university-of-cincinnati-officer-indicted-in-shooting-death-of-motorist.html?_r=0.

³ *Id.*



Cincinnati even though its police officers could patrol city streets outside of the campus.⁴ Consequently, a law enforcement agency with the authority to arrest and use force against city residents has worked alongside the Cincinnati Police Department (CPD), but has not been subjected to the same oversight and training. Shortly after Mr. Dubose's death, University of Cincinnati President Santa Ono stated that the school would consider joining the city's policing collaborative agreement between the CPD, the ACLU and other community organizations, which has been credited for improving policing services and community-police relations in that city.⁵ But, this occurs too late for the family of Samuel Dubose.

Similar to the University of Cincinnati, Baltimore City Public Schools operates its own police force. Created by statute in 1991, members of the Baltimore School Police Force are employees of the Baltimore City Board of School Commissioners and have "all the powers of a law enforcement officer in the state," including arrest powers.⁶ It comprises approximately 117 sworn officers⁷ who serve a population of about 85,000 students.⁸ The student population is nearly 85 percent Black, 8 percent white, and 7 percent Latino.⁹ Most students are from low-income households; 84 percent are eligible for free or reduced lunch.¹⁰

Data received by LDF from Baltimore City Public Schools, through a public information act request, show that school police officers have been accused of misconduct and excessive use-of-force on numerous occasions. For example, in 2014, there were eight misconduct complaints, of which five were sustained.¹¹ In that year, school police used force in 16 incidents, most of which (12) involved the use of oleoresin capsicum (pepper) spray.¹² Most of the "suspects" were unarmed

⁴ See, Memorandum of Agreement between the United States Department Justice and the City of Cincinnati, Ohio and the Cincinnati Police Department (April 12, 2002), <http://www.cincinnati-oh.gov/police/linkservid/EA1A2C00-DCB5-4212-8628197B6C923141/showMeta/0/>.

⁵ See, Ben Petracco, *Ono UC open to discuss, participate in Cincinnati Collaborative Agreement*, Cincinnati's WLWT5, July 22, 2015, <http://www.wlwt.com/news/ono-uc-open-to-discuss-participate-in-cincinnati-collaborative-agreement/34298930>.

⁶ See, Md.Code Ann., Educ. §§4-318 (c) and (d)(1)(2015).

⁷ See, Marshall T. Goodwin, Chief, Baltimore School Police Force, *Deployment For SY 2015/2016*, July 2, 2015. LDF requested an official count of the number of sworn officers and is waiting for a response from the school system.

⁸ See, Baltimore City Public Schools, *District Profile*, <http://www.baltimorecityschools.org/cms/lib/MD01001351/Centricity/Domain/8048/DistrictDataProfile.pdf> (last visited Sept. 3, 2015).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Misconduct includes discourtesy, harassment, and conduct unbecoming. See, Memorandum from Detective Sergeant Norman Coleman to Chief Marshall T. Goodwin, Baltimore City School Police Force, *2014 Internal Affairs Annual Report* dated 2015.

¹² See, Memorandum from Detective Sergeant Norman Coleman to Chief Marshall T. Goodwin, Baltimore City School Police Force, *Incidents of Use of Force for 2014*, Internal Affairs Division Report 2014 at 5 dated 2015.

and allegedly assaulting others.¹³ Two incidents involved the excessive use of force; one was sustained.¹⁴ While the Internal Affairs Division reports do not offer details about the incidents, news reports reveal that in October 2014 a school police officer allegedly assaulted three girls who were students at a middle school. One 13-year-old girl sustained head injuries requiring stitches after the officer repeatedly struck her with a baton. A grand jury indicted the officer early this year, charging her with felony assault and multiple counts of misdemeanor assault for allegedly pepper spraying the other girls.¹⁵ According to news reports, the young students were initially charged with assaulting an officer until the local prosecutor saw video footage of the incident and dropped the charges.¹⁶ All of the students were reportedly suspended and sent to an alternative school.¹⁷

Incidents of school police misconduct and excessive use of force that have occurred on school grounds have the potential of occurring anywhere in the city as the Baltimore School Police Force has the authority to enforce laws citywide. The statute creating the police force states that its members may act in an official capacity on property operated or controlled by the school system and no other city property unless officers are: pursuing a suspected offender; facilitating the steady flow of traffic on and off of school grounds; and/or the BPD or the Mayor of Baltimore City ask them to do so.¹⁸ On its website, the Baltimore School Police Force announced that it has entered into a “Concurrent Jurisdiction Agreement” with the BPD, which gives it the authority to enforce laws citywide.¹⁹

LDF has received a copy of a Memorandum of Understanding between the Baltimore City Public Schools system and the BPD authorizing the school police force to “exercise full police power anywhere within the jurisdiction of the City of Baltimore.”²⁰ As in Cincinnati, a school police force has the ability to patrol city streets, but it is not included in the federal investigation and potential oversight of the Justice Department. This is particularly problematic during this school year because the police force’s deployment plan indicates that school police are assigned

¹³ *Id.* at 4.

¹⁴ *Id.* at 1.

¹⁵ Saliqa Khan, *School police officer charged with assault of 3 students*, WBAL-TV, Mar. 3, 2015, <http://www.wbalv.com/news/School-police-officer-charged-with-assault-of-3-students/31567264>.

¹⁶ See, Jayne Miller, *Girls injured, suspended after fight with school police*, WBAL-TV, Jan. 29, 2015 <http://www.wbalv.com/news/girls-injured-suspended-after-fight-with-school-officer/31004666>.

¹⁷ *Id.*

¹⁸ See, Md. Code Ann., Educ. §4-318 (d)(2) (2015).

¹⁹ See, Baltimore City Public Schools, *School Police Authority*, http://pcab.baltimorecityschools.org/Departments/School_Police/Authority.asp (last visited Sept. 2, 2015).

²⁰ See, Memorandum of Understanding between the Baltimore City Public School System and Baltimore Police Department at 1 (June 27, 2007).



to foot patrol, bike units and mobile response units outside of schools.²¹ This action occurred in response to recent findings that school police officers had been patrolling school buildings during school hours with firearms, even though state law prohibited them from doing so.²²

Finally, data from Baltimore City Public Schools show that some students have been arrested for minor infractions. For example, school-based arrests of students decreased from 780 to 472 between the 2009-10 and 2011-12 school years, and began to increase in subsequent school years.²³ Of the 383 youth and adult student arrests²⁴ made during the calendar year of 2014, over one-third (34 percent) of the incidents reported were for trespassing, disorderly conduct, and common assault (likely fighting) – behavior that could have been addressed through the school disciplinary process.²⁵ While the school system reports that it does not collect arrest data disaggregated by race or ethnicity of the student, according to civil rights data that Baltimore City Public Schools reported to the U.S. Department of Education in 2011, the most recent year for which data is available, 93 percent of students suspended out of school were Black and only 4 percent were white even though they comprised 85 and 8 percent of the student population respectively.²⁶ This suggests that similar racial disparities may be found in student arrests, if the district collected demographic data.

Baltimore School Police Force's sustained complaints of misconduct and excessive use of force, as well as its close working relationship with BPD, demonstrate the need for a federal investigation of both police departments to ensure that there is no pattern or practice of violating the civil rights of Baltimore residents. Indeed, known data and information about school and Baltimore City policing practices²⁷ may merely scratch the surface of a mountain of evidence that may support a finding of unlawful policing.

²¹ See, Marshall T. Goodwin, Chief, Baltimore School Police Force, *Deployment For SY 2015/2016*, July 2, 2015.

²² See, Danielle Sweeney, *New deployment strategy will allow most school police to carry firearms*, Mar. 31, 2015, <https://www.baltimorebrew.com/2015/03/31/new-deployment-strategy-will-allow-most-school-police-to-carry-their-firearms/>. See also Md.Code Ann., Educ. §4-318 (d)(3)(i) (2015).

²³ See, Baltimore City School Police Force, *Yearly Arrest Data*, June 24, 2015.

²⁴ The total number of juvenile and adult student arrests amount to 397, however data received from Baltimore City School Police only provide incident information for 383 of the total.

²⁵ See, Baltimore City School Police, *2014 Baltimore City School Police Arrest Data*.

²⁶ See, U.S. Department of Education, *Civil Rights Data Collection, Baltimore City Public Schools* (Survey Year 2011), <http://ocrdata.ed.gov/Page?t=d&eid=26918&syk=6&pid=736#>.

²⁷ See Mark Puente, *Undue Force*, Baltimore Sun, Sept. 28, 2014, <http://data.baltimoresun.com/news/police-settlements/>. See also, Jessica Anderson, *A Look at Recent History of Baltimore in-custody deaths*, Baltimore Sun, Apr. 22, 2015, <http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-police-in-custody-deaths-20150422-story.html>; Open Baltimore, *2014 Officer Involved Use of Force*, <https://data.baltimorecity.gov/Public-Safety/2014-Officer-Involved-Use-Of-Force/tf63-5wg2> (last visited Sept. 4, 2015).



Based on what is publicly known about policing practices in Baltimore, LDF recommends the following policing reforms: the annual collection and public reporting of arrests, use-of-force, and pedestrian and traffic stop data disaggregated by race, ethnicity, age and gender of the civilian, and reason for the police interaction; scenario-based training on de-escalation, adolescent development and proper interactions with persons with mental illness and other disabilities; enforcement of these trainings by the close monitoring of police conduct and the imposition of disciplinary actions or retraining, when necessary; and the timely investigation and resolution of civilian complaints against police.

We welcome the opportunity to discuss this request further. Please do not hesitate to contact me at 202-682-1300.

Sincerely yours,

A handwritten signature in blue ink that reads "Monique L. Dixon". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Monique L. Dixon
Deputy Director of Policy and
Senior Counsel

cc: Timothy Mygatt, Special Counsel, Special Litigation Section, U.S. Department of Justice